

Dale M. Cendali  
Claudia Ray  
Brendan T. Kehoe  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022  
Tel: 212-446-4800  
Fax: 212-446-4900

*Attorneys for Defendants*  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY and OBEY GIANT  
ART, INC.,

Plaintiffs,

v.

THE ASSOCIATED PRESS,

Defendant and Counterclaim  
Plaintiff,

v.

SHEPARD FAIREY, et al.,

Counterclaim Defendants

Case No.: 09 CIV 01123 (AKH)

**ECF CASE**

**DECLARATION OF  
BRENDAN T. KEHOE, ESQ., IN  
SUPPORT OF THE ASSOCIATED  
PRESS'S MOTION FOR  
SUMMARY JUDGMENT**

I, BRENDAN T. KEHOE, Esq., hereby declare as follows:

1. I am an associate of the firm of Kirkland & Ellis LLP, counsel to the Associated Press (“AP”) in this action. I submit this declaration in support of the AP’s Motion for Summary Judgment. I make this declaration based upon my knowledge of matters in this action, and to place before the Court the following documents.

2. Attached hereto as Exhibit 1, is a true and correct copy of excerpts from the deposition transcript of Kenneth J. Dale, dated March 26, 2010.

3. Attached hereto as Exhibit 2, is a true and correct copy of the AP's Consolidated Financial Statements, Years Ended December 2009 and 2008.
4. Attached hereto as Exhibit 3, is a true and correct copy of AP0005570.
5. Attached hereto as Exhibit 4, is a true and correct copy of AP0002615-16.
6. Attached hereto as Exhibit 5, are true and correct copies of AP0010683-84, AP0010699-702, and AP0010703-4.
7. Attached hereto as Exhibit 6, is a true and correct copy of excerpts from the deposition transcript of Blake Sell, dated December 12, 2010.
8. Attached hereto as Exhibit 7, is a true and correct copy of excerpts from the deposition transcript of Farah DeGrave, dated March 23, 2010.
9. Attached hereto as Exhibit 8, is a true and correct copy of AP0006810-38.
10. Attached hereto as Exhibit 9, is a true and correct copy of AP0011063.
11. Attached hereto as Exhibit 10, is a true and correct copy of excerpts from the deposition transcript of Frank Shepard Fairey, dated March 16, 2010.
12. Attached hereto as Exhibit 11, is a true and correct copy of Obey Clothing's website, at <http://obeyclothing.com/#/history/> .
13. Attached hereto as Exhibit 12, is a true and correct copy of excerpts from the deposition transcript of Olivia Perches, dated September 22, 2009.

14. Attached hereto as Exhibit 13, is a true and correct copy of Obey Giant's website, at <http://obeygiant.com/store/> .

15. Attached hereto as Exhibit 14, is a true and correct copy of FAIREY61283.001-61283.036.

16. Attached hereto as Exhibit 15, are true and correct copies of FAIREY104954-83, and FAIREY104988-89.

17. Attached hereto as Exhibit 16, are true and correct copies of Exhibits 13, 18, 26, 30, 102, 106, 107, 108 and 110 from the deposition of Frank Shepard Fairey, dated March 17, 2010.

18. Attached hereto as Exhibit 17, is a true and correct copy of *The Politics of Commerce: Shepard Fairey and the New Cultural Entrepreneurship*, in *Blowing Up the BRAND: Critical Perspectives on Promotional Culture* 263-283, 278 (Melissa Aronczyk & Devon Powers eds. 2010)

19. Attached hereto as Exhibit 18, is a true and correct copy of excerpts from the deposition transcript of Regan Donald Juncal, dated March 23, 2010.

20. Attached hereto as Exhibit 19, is a true and correct copy of Obey Clothing's website, at <http://obeyclothing.com/#/family/> .

21. Attached hereto as Exhibit 20, is a true and correct copy of Obey Clothing's website, at <http://obeyclothing.com/#/stockist/> .

22. Attached hereto as Exhibit 21, is a true and correct copy of Obey Clothing's website, at <http://shop.obeyclothing.com/> .

23. Attached hereto as Exhibit 22, is a true and correct copy of OTT028254-59.

24. Attached hereto as Exhibit 23, is a true and correct copy of excerpts from the deposition transcript of Adam Van Berckelaer, dated March 11, 2010.

25. Attached hereto as Exhibit 24, are true and correct copies of OTT000644-46 and OTT000830-32.

26. Attached hereto as Exhibit 25, is a true and correct copy of Obey Clothing's website, at <http://obeyclothing.com/news/?p=3292> .

27. Attached hereto as Exhibit 26, is a true and correct copy of OTT027330-36.

28. Attached hereto as Exhibit 27, is a true and correct copy of FAIREY105177-79, FAIREY105206-7, FAIREY105208.

29. Attached hereto as Exhibit 28, is a true and correct copy of FAIREY105002-3.

30. Attached hereto as Exhibit 29, is a true and correct copy of MCCORMACK000162-65.

31. Attached hereto as Exhibit 30, is a true and correct copy of FAIREY119924-25.

32. Attached hereto as Exhibit 31, is a true and correct copy of excerpts from the deposition transcript of Regan Donald Juncal, dated August 26, 2010.

33. Attached hereto as Exhibit 32, are true and correct copies of Exhibit 33, and Exhibit 34 from the deposition of Regan Donald Juncal, dated March 23, 2010.
34. Attached hereto as Exhibit 33, is a true and correct copy of FAIREY78794-97.
35. Attached hereto as Exhibit 34, is a true and correct copy of excerpts from the deposition transcript of Chris Broders, dated March 16, 2010.
36. Attached hereto as Exhibit 35, is a true and correct copy of OTT000191-93.
37. Attached hereto as Exhibit 36, is a true and correct copy of FAIREY4000001-8.
38. Attached hereto as Exhibit 37, is a true and correct copy of OTT000833-35.
39. Attached hereto as Exhibit 38, is a true and correct copy of Obey Giant Art's website, at <http://obeygiant.com/headlines/obey-x-public-enemy-x-glen-e-friedman-x-clothing> .
40. Attached hereto as Exhibit 39, is a true and correct copy of FAIREY69594-99.
41. Attached hereto as Exhibit 40, is a true and correct copy of AP0003209-10.
42. Attached hereto as Exhibit 41, are true and correct copies of Exhibit 4 and Exhibit 52 from the deposition of Mannie Garcia, dated March 4, 2010.
43. Attached hereto as Exhibit 42, is a true and correct copy of excerpts from the deposition transcript of Mannie Garcia, dated March 4, 2010.
44. Attached hereto as Exhibit 43, is a true and correct copy of excerpts from the deposition transcript of Laurie Dahlberg, dated December 10, 2010.

45. Attached hereto as Exhibit 44, is a true and correct copy of excerpts from the deposition transcript of Marita Sturken, dated November 24, 2010.

46. Attached hereto as Exhibit 45, are true and correct copies of AP0000816-17, AP0000818-19, AP0000820-21, and AP0011058.

47. Attached hereto as Exhibit 46, is a true and correct copy of correspondence from Anthony T. Falzone to Dale M. Cendali, George F. Carpinello, and Bradford E. Kile, dated October 9, 2009.

48. Attached hereto as Exhibit 47, is a true and correct copy of correspondence from William W. Fisher III and Geoffrey Stewart to Honorable Alvin K. Hellerstein, dated December December 22, 2010.

49. Attached hereto as Exhibit 48, is a true and correct copy of FAIREY100436.

50. Attached hereto as Exhibit 49, is a true and correct copy of excerpts from the deposition of Frank Shepard Fairey, dated March 17, 2010.

51. Attached hereto as Exhibit 50, is a true and correct copy of Obey Giant Art's website, at <http://obeygiant.com/headlines/obama#more-627> .

52. Attached hereto as Exhibit 51, is a true and correct copy of attachments incorporated in Fairey's Second Supplemental Responses to The AP's Interrogatories Nos. 19 and 20.

53. Attached hereto as Exhibit 52, is a true and correct copy of attachments incorporated in Fairey's Second Supplemental Responses to The AP's Interrogatories No. 21.

54. Attached hereto as Exhibit 53, is a true and correct copy of AP0000082-95.
55. Attached hereto as Exhibit 54, is a true and correct copy of FAIREY126781.
56. Attached hereto as Exhibit 55, is a true and correct copy of FAIREY 110219-20.
57. Attached hereto as Exhibit 56, is a true and correct copy of FAIREY110374-75.
58. Attached hereto as Exhibit 57, is a true and correct copy of Answers and Objections of Fairey to The AP's First Set of Requests for Admissions, dated May 3, 2010.
59. Attached hereto as Exhibit 58, is a true and correct copy of correspondence from Claudia Ray to Anthony Falzone, dated October 1, 2009.
60. Attached hereto as Exhibit 59, is a true and correct copy of OBCL000001-2.
61. Attached hereto as Exhibit 60, is a true and correct copy of OTT013733-35.
62. Attached hereto as Exhibit 61, is a true and correct copy of OTT027454-56.
63. Attached hereto as Exhibit 62, is a true and correct copy of OTT026284.
64. Attached hereto as Exhibit 63, is a true and correct copy of OTT028260-73.
65. Attached hereto as Exhibit 64, is a true and correct copy of OTT000307-24.
66. Attached hereto as Exhibit 65, is a true and correct copy of OTT000001.
67. Attached hereto as Exhibit 66, is a true and correct copy of OTT013765.
68. Attached hereto as Exhibit 67, is a true and correct copy of OTT018910.

69. Attached hereto as Exhibit 68, is a true and correct copy of OTT021318.

70. Attached hereto as Exhibit 69, is a true and correct copy of excerpts from the deposition transcript of Adam Van Berckelear, dated August 26, 2010.

71. Attached hereto as Exhibit 70, is a true and correct copy of OTT028248-53.

72. Attached hereto as Exhibit 71, is a true and correct copy of OTT028242-47.

73. Attached hereto as Exhibit 72, is a true and correct copy of OBCL00182-216.

74. Attached hereto as Exhibit 73, is a true and correct copy of excerpts from the deposition transcript of William Landes, dated December 8, 2010.

75. I declare under penalty of perjury that the foregoing is accurate to the best of my knowledge.

Executed this 6th day of January 2011 at New York, New York.

/s/Brendan T. Kehoe

Brendan T. Kehoe, Esq.